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## Court battle next in ouster of Eastside Catholic educator

The vice principal at Eastside Catholic School, fired after officials learned he had married his same-sex partner, is suing the school and the Archdiocese of Seattle.

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Mark Zmuda to sue both school, archdiocese

Eastside Catholic School, facing a wrongful-dismissal lawsuit from its former vice principal, said Thursday that Mark Zmuda referred to his same-sex partner as a “friend” and later as “roommate” on an emergency-contact form, and that months before his firing was asked to remove “inappropriate” Facebook photos that had generated parent concern.

The claims come in response to the lawsuit Zmuda’s lawyers plan to file Friday in King County Superior Court against the school and the Archdiocese of Seattle. They also offer a glimpse into the kinds of details sure to spill out in what promises to be a closely watched case centering on same-sex marriage and the Catholic Church.

In December, the private school in Sammamish fired Zmuda, who was also the swim coach, after administrators learned he had married his longtime partner over the summer.

The school at the time said he was terminated for violating church doctrine that he agreed to uphold when he accepted the job.

Zmuda’s suit argues that as vice principal, his duties were administrative and “wholly unrelated to any religious practice or activity.”

The Archdiocese, which could not be reached for comment Thursday, has said it had nothing to do with Zmuda’s dismissal, but supported the school’s decision.

Although affiliated with the archdiocese, Eastside is run by its own board of trustees.

Zmuda's dismissal ignited student protests and led eventually to the resignation of the school's president, Sister Mary Tracy.

In the lawsuit, Zmuda claims breach of contract, wrongful termination, violation of public policy, as well as violation of the state's consumer-protection and anti-discrimination laws. It is also claiming "tortious interference" by the archdiocese into Zmuda's economic relations with his employer. In the suit, Zmuda said Tracy told him the decision to terminate him came from the archbishop.

The school said it plans to file a motion to dismiss the lawsuit, saying such a complaint would "impermissibly entangle the Court in Catholic doctrine," and violate its First Amendment right to make decisions on matters of faith.

"This Court's interference in Eastside Catholic's decision on whether to employ a person married to someone of the same sex, a violation of Catholic doctrine, would encroach on Eastside Catholic's ability to manage its internal affairs," the school said in its answer to the lawsuit's claims.

Additionally, the school said, the very same-sex-marriage law that allowed Zmuda to marry his partner last summer, also prohibits him from suing, since that law exempts religious organizations from having to acknowledge such marriages in the first place.

Zmuda said in his lawsuit that he never revealed nor did he try to conceal he was gay. He said he first told school administrators he was gay in January 2013, when he was called to the president's office and asked directly.

Administrators said in their response to the lawsuit that he was called to the office to answer concerns raised by parents and others regarding public photos posted on Zmuda's Facebook page. Schools officials considered the photos inappropriate for a representative of the school and inconsistent with the school's Catholic faith-based values.

During that meeting, Zmuda told them he was gay and agreed to remove the Facebook profile, according to the school's response.

Zmuda accuses the school of breaching its promise not to discriminate against employees based on their marital status and sexual orientation and other factors protected by state law — a promise that until not long ago was posted on the school's website.

"As a result of [Eastside Catholic's] deceptive act or practice, Mr. Zmuda married his husband with a reasonable expectation that he would continue to be employed by ECS," the lawsuit states.

Zmuda's attorneys appear to be taking advantage of an opening created last month when the state Supreme Court ruled that religious nonprofits, like Eastside for example, can be sued for job discrimination if an employee's work was unrelated to religion.

Before that ruling, attorneys seldom filed discrimination lawsuits against religious nonprofits in Washington state courts, where they knew there was no protection, and instead went to federal court.

Federal law, however, does not count sexual orientation as a protected class in employment discrimination.

Zmuda claims that his duties were unrelated to religious practices — that those duties were “no different than the job duties of a vice principal at a public school or nonreligious private school.”

But the school counters that his duties were “inextricably intertwined with the religious practice and activities of the church,” as outlined in the employee handbook he signed. They add that while at Eastside, he served as Eucharistic minister at some of Eastside Masses and liturgies, and delivered the opening prayer over the public-address system for staff and students, among other duties.

The lawsuit seeks compensation for lost wages, emotional distress and harm to Zmuda's reputation.

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